

REFERENCE TITLE: loans; deferred presentment

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2688

Introduced by
Representatives McCune Davis, Bradley, Burton Cahill, Downing, Garcia M,
Landrum Taylor, Lujan, Prezelski, Sinema: Aguirre A, Alvarez, Cajero
Bedford, Gallardo, Lopes, Lopez L, Meza, Miranda B, Rios P, Tom

AN ACT

AMENDING SECTIONS 6-1259, 6-1260 AND 6-1261, ARIZONA REVISED STATUTES;
AMENDING TITLE 6, CHAPTER 12.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY
ADDING SECTIONS 6-1264 THROUGH 6-1272; RELATING TO DEFERRED PRESENTMENT
COMPANIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 6-1259, Arizona Revised Statutes, is amended to
3 read:

4 6-1259. Prohibited acts

5 A. A person shall not engage in the business of providing deferred
6 presentment services without first obtaining a license pursuant to this
7 chapter. A separate license is required for each location from which the
8 business is conducted. The licensee shall post its license to engage in the
9 business of deferred presentment services at each location that is licensed
10 pursuant to this chapter.

11 B. A licensee shall not:

12 1. Advance monies on the security of a check without first obtaining
13 reasonable evidence that indicates that the account on which the presented
14 check is drawn is an open and active account.

15 2. Assess any fee that is more than the amount prescribed in this
16 chapter.

17 3. At the licensed location engage in the business of:

18 (a) Making loans of money or extensions of credit other than those
19 allowed under this chapter or title 44, chapter 11, article 3.

20 (b) Discounting notes, bills of exchange, items or other evidences of
21 debt.

22 (c) Accepting deposits or bailments of money or items, except as
23 expressly provided in section 6-1260.

24 4. Use or cause to be published or disseminated any advertisement that
25 contains false, misleading or deceptive statements or representations.

26 5. Engage in the business of deferred presentment services at
27 locations other than licensed locations.

28 6. Engage in unfair, deceptive or fraudulent practices.

29 7. Alter or delete the date on a check accepted by the licensee.

30 8. Take possession of an undated check or a check dated on a date
31 other than the date on which the licensee takes possession of the check or
32 the date of presentment.

33 9. Require a customer to provide security for the transaction, other
34 than the presented check, or require the customer to provide a guaranty from
35 another person.

36 10. Fail to take reasonable measures to ensure that no customer has
37 more than one deferred presentment loan outstanding at any time with any
38 licensee in this state.

39 11. Engage in the sale of the following goods or services at any
40 licensed location:

41 (a) Gaming activities, including the sale of lottery tickets.

42 (b) Alcoholic beverages.

43 12. Tie or otherwise condition the offering of deferred presentment
44 services to the sale of any good or service.

- 1 13. Permit others to engage in any activity prohibited in this section
2 at a location licensed pursuant to this chapter.
- 3 14. Offer deferred presentment services for less than ~~five~~ THIRTEEN
4 days.
- 5 15. Be required to request or accept any written representation by a
6 customer as to whether the customer has any outstanding checks for deferred
7 presentment held by other licensees.
- 8 16. ENTER INTO A DEFERRED PRESENTMENT AGREEMENT WITH A CUSTOMER IF THE
9 AGREEMENT WOULD RESULT IN THE CUSTOMER BEING INDEBTED FOR A PERIOD OF MORE
10 THAN FORTY-FIVE CONSECUTIVE DAYS TO A LICENSEE. EXCEPT AS PROVIDED UNDER
11 SECTION 6-1267, IF A CUSTOMER HAS A DEFERRED PRESENTMENT LOAN OUTSTANDING FOR
12 A PERIOD OF MORE THAN FORTY-FIVE CONSECUTIVE DAYS, NO LICENSEE MAY OFFER OR
13 ENTER INTO A DEFERRED PRESENTMENT AGREEMENT WITH THE CUSTOMER FOR AT LEAST
14 SEVEN CALENDAR DAYS AFTER THE DATE ON WHICH THE OUTSTANDING BALANCE OF A
15 DEFERRED PRESENTMENT LOAN MADE DURING THE FORTY-FIVE CONSECUTIVE DAY PERIOD
16 IS PAID IN FULL. IF A DEFERRED PRESENTMENT LOAN IS MADE TO A CUSTOMER WITHIN
17 SIX DAYS AFTER THE OUTSTANDING BALANCE OF A DEFERRED PRESENTMENT IS PAID IN
18 FULL, THOSE DAYS ARE COUNTED AS CONSECUTIVE DAYS FOR PURPOSES OF THIS
19 PARAGRAPH. FOR THE PURPOSES OF THIS PARAGRAPH, "CONSECUTIVE DAYS" MEANS A
20 SERIES OF CONTINUOUS CALENDAR DAYS IN WHICH THE CUSTOMER HAS AN OUTSTANDING
21 BALANCE ON A DEFERRED PRESENTMENT LOAN.
- 22 17. TAKE OR ATTEMPT TO TAKE AN INTEREST IN ANY OF THE CUSTOMER'S
23 PERSONAL PROPERTY TO SECURE A DEFERRED PRESENTMENT LOAN.
- 24 18. THREATEN TO USE OR ACTUALLY USE THE CRIMINAL PROCESS IN THIS STATE
25 OR IN ANOTHER STATE TO COLLECT ON A DEFERRED PRESENTMENT LOAN.
- 26 19. KNOWINGLY ACCEPT WHOLE OR PARTIAL PAYMENT OF A DEFERRED PRESENTMENT
27 LOAN THROUGH THE PROCEEDS OF ANOTHER DEFERRED PRESENTMENT LOAN.
- 28 20. THREATEN TO TAKE ANY ACTION AGAINST A CUSTOMER THAT IS PROHIBITED
29 BY THIS CHAPTER OR MAKE ANY MISLEADING OR DECEPTIVE STATEMENTS REGARDING A
30 DEFERRED PRESENTMENT LOAN.
- 31 21. INCLUDE ANY OF THE FOLLOWING IN THE DOCUMENTS REQUIRED BY SECTION
32 6-1260, SUBSECTION B:
- 33 (a) A CONFESSION OF JUDGMENT CLAUSE.
- 34 (b) A WAIVER OF THE RIGHT TO A JURY TRIAL, IF APPLICABLE, IN ANY
35 ACTION BROUGHT BY OR AGAINST A CUSTOMER, UNLESS THE WAIVER IS INCLUDED IN AN
36 ARBITRATION CLAUSE.
- 37 (c) A MANDATORY ARBITRATION CLAUSE THAT IS OPPRESSIVE, UNFAIR,
38 UNCONSCIONABLE OR SUBSTANTIALLY IN DEROGATION OF THE RIGHTS OF A CUSTOMER.
- 39 (d) A PROVISION IN WHICH THE CUSTOMER AGREES NOT TO ASSERT ANY CLAIM
40 OR DEFENSE ARISING OUT OF THE CONTRACT.
- 41 22. TAKE ANY POWER OF ATTORNEY.
- 42 23. TAKE ANY SECURITY INTEREST IN REAL ESTATE.
- 43 24. COLLECT A DELINQUENCY OR COLLECTION CHARGE ON ANY INSTALLMENT
44 REGARDLESS OF THE PERIOD IN WHICH IT REMAINS IN DEFAULT.

1 WARNING: THIS LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL
2 NEEDS. THIS LOAN SHOULD BE USED ONLY TO MEET SHORT-TERM CASH
3 NEEDS. THE COST OF YOUR LOAN MAY BE HIGHER THAN LOANS OFFERED
4 BY OTHER LENDING INSTITUTIONS. THIS LOAN IS REGULATED BY THE
5 DEPARTMENT OF FINANCIAL INSTITUTIONS.

6 C. A licensee shall provide a notice in a prominent place on each
7 written agreement that specifies that no customer may have outstanding more
8 than one deferred presentment service agreement at one time and the face
9 amount, exclusive of any fees, cannot be more than five hundred dollars OR
10 TWENTY-FIVE PER CENT OF THE CUSTOMER'S GROSS MONTHLY INCOME, WHICHEVER IS
11 LESS. A licensee shall ask every customer who seeks deferred presentment
12 services whether that customer has any outstanding checks payable to other
13 licensees.

14 D. BEFORE A DEFERRED PRESENTMENT LOAN IS MADE, A LICENSEE SHALL
15 DELIVER TO THE CUSTOMER A PAMPHLET PREPARED BY THE SUPERINTENDENT THAT DOES
16 ALL OF THE FOLLOWING:

17 1. EXPLAINS, IN SIMPLE ENGLISH AND SPANISH, ALL OF THE CUSTOMER'S
18 RIGHTS AND RESPONSIBILITIES IN A DEFERRED PRESENTMENT LOAN TRANSACTION.

19 2. INCLUDES A TOLL FREE TELEPHONE NUMBER TO THE SUPERINTENDENT'S
20 OFFICE TO HANDLE CONCERNS OR PROVIDE INFORMATION ABOUT WHETHER A LENDER IS
21 LICENSED AND WHETHER COMPLAINTS HAVE BEEN FILED WITH THE SUPERINTENDENT.

22 3. PROVIDES INFORMATION REGARDING THE AVAILABILITY OF DEBT MANAGEMENT
23 SERVICES.

24 ~~D.~~ E. A licensee may rely on the customer's representation of whether
25 the customer has any outstanding checks for deferred presentment held by
26 other licensees.

27 ~~E.~~ F. The maker of a check has the right to redeem the check from the
28 licensee before the agreed on date of presentment or deposit if the maker
29 pays the licensee the amount of the check.

30 ~~F.~~ G. A licensee shall not directly or indirectly charge any fee or
31 other consideration for accepting a check for deferred presentment or deposit
32 that is more than fifteen ~~per cent of the face amount of the check~~ DOLLARS
33 PER ONE HUNDRED DOLLARS LOANED for any initial transaction or any extension.
34 EXCEPT AS PROVIDED IN SECTION 6-1267, THIS CHARGE IS CONSIDERED FULLY EARNED
35 AS OF THE DATE ON WHICH THE INITIAL DEFERRED PRESENTMENT LOAN IS MADE.

36 ~~G.~~ H. A licensee may impose the fee prescribed in subsection ~~F~~ G of
37 this section only once for each written agreement. The fee is earned on
38 execution of the written agreement and is not subject to any reimbursement
39 even if the maker redeems the check pursuant to subsection ~~E~~ F of this
40 section.

41 ~~H.~~ I. The fee charged by the licensee is not interest for purposes of
42 any other law or rule of this state.

43 ~~I.~~ J. A person may NOT extend the presentment or deposit of a check.
44 ~~not more than three consecutive times. For each extension the customer and~~
45 ~~the licensee shall terminate the previous agreement and sign a separate~~

1 ~~agreement. During an incomplete transaction the customer may not receive any~~
2 ~~additional monies from the licensee. The licensee may charge a fee as~~
3 ~~prescribed in subsection F of this section for each extension. THIS~~
4 ~~SUBSECTION DOES NOT PROHIBIT ENTERING INTO A REPAYMENT PLAN AS PROVIDED UNDER~~
5 ~~SECTION 6-1267. If a customer has completed a deferred presentment~~
6 ~~transaction with the licensee, the customer may enter into a new agreement~~
7 ~~for deferred presentment services with the licensee. A transaction is~~
8 ~~completed when the customer's check is presented for payment, deposited or~~
9 ~~redeemed by the customer for cash.~~

10 ~~J. K. If a check is returned to the licensee from a payer~~
11 ~~financial institution due to insufficient funds, a closed account or a~~
12 ~~stop payment order, the licensee may use all available civil remedies to~~
13 ~~collect on the check, including the imposition of the dishonored check~~
14 ~~SERVICE fee prescribed in section 44-6852. ONLY ONE SUCH FEE MAY BE~~
15 ~~COLLECTED BY THE LICENSEE WITH RESPECT TO A PARTICULAR CHECK EVEN IF THE~~
16 ~~CHECK IS DEPOSITED AND RETURNED MORE THAN ONCE. A LICENSEE SHALL PRESENT~~
17 ~~THE CHECK FOR PAYMENT NOT MORE THAN TWICE. A FEE UNDER THIS SUBSECTION IS~~
18 ~~A LICENSEE'S EXCLUSIVE CHARGE FOR LATE PAYMENT. An individual who issues~~
19 ~~a personal check to a licensee under a deferred presentment agreement is~~
20 ~~not subject to criminal prosecution pursuant to title 13, chapter 18.~~

21 ~~L. A CUSTOMER HAS THE RIGHT TO REDEEM A CHECK ISSUED IN CONNECTION~~
22 ~~WITH A DEFERRED PRESENTMENT LOAN FROM THE LICENSEE HOLDING THE CHECK AT ANY~~
23 ~~TIME BEFORE THE DEFERRED PRESENTMENT LOAN BECOMES PAYABLE BY PAYING THE FULL~~
24 ~~AMOUNT OF THE CHECK.~~

25 ~~M. ON OR BEFORE SEPTEMBER 1, 2007, THE DEPARTMENT SHALL IMPLEMENT OR~~
26 ~~CONTRACT WITH A THIRD PARTY TO IMPLEMENT A DATABASE WITH REAL-TIME ACCESS~~
27 ~~THROUGH AN INTERNET CONNECTION FOR LICENSEES. THE DATABASE SHALL BE~~
28 ~~ACCESSIBLE TO THE DEPARTMENT AND LICENSEES TO VERIFY WHETHER ANY DEFERRED~~
29 ~~PRESENTMENT TRANSACTIONS ARE OUTSTANDING FOR A PARTICULAR PERSON. LICENSEES~~
30 ~~SHALL PAY A FEE TO THE DEPARTMENT IN AN AMOUNT TO BE DETERMINED BY THE~~
31 ~~SUPERINTENDENT THAT SHALL COVER THE DEPARTMENT'S COSTS OF IMPLEMENTING THE~~
32 ~~DATABASE. BEFORE ENTERING INTO A DEFERRED PRESENTMENT WRITTEN AGREEMENT,~~
33 ~~LICENSEES SHALL SUBMIT DATA IN A FORMAT REQUIRED BY THE DEPARTMENT BY RULE.~~
34 ~~THE FORMAT SHALL INCLUDE ALL OF THE FOLLOWING:~~

- 35 ~~1. THE CUSTOMER'S NAME.~~
- 36 ~~2. THE CUSTOMER'S SOCIAL SECURITY NUMBER OR EMPLOYMENT AUTHORIZATION~~
37 ~~ALIEN NUMBER.~~
- 38 ~~3. THE CUSTOMER'S ADDRESS.~~
- 39 ~~4. THE CUSTOMER'S DRIVER LICENSE NUMBER.~~
- 40 ~~5. THE AMOUNT OF THE TRANSACTION.~~
- 41 ~~6. THE DATE OF THE TRANSACTION.~~
- 42 ~~7. THE DATE THE TRANSACTION IS CLOSED.~~

43 ~~N. A LICENSEE MAY RELY ON THE INFORMATION CONTAINED IN THE DATABASE AS~~
44 ~~ACCURATE AND IS NOT SUBJECT TO AN ADMINISTRATIVE PENALTY OR CIVIL LIABILITY~~
45 ~~AS A RESULT OF RELYING ON INACCURATE INFORMATION IN THE DATABASE.~~

1 0. THE DEPARTMENT MAY ADOPT RULES TO ADMINISTER AND ENFORCE THIS
2 SECTION.

3 Sec. 3. Section 6-1261, Arizona Revised Statutes, is amended to read:

4 6-1261. Books, accounts and records; examinations; costs;
5 annual report; late fee

6 A. A licensee shall maintain in its branch and home offices all books,
7 accounts and records that the superintendent reasonably requires. The
8 licensee shall:

9 1. Ensure that the books, accounts and records are sufficiently
10 detailed to comply with all applicable statutes and rules.

11 2. Maintain the books, accounts and records separately from any other
12 business in which the licensee is engaged and shall retain the books,
13 accounts and records for at least three years.

14 B. The superintendent may examine the books, accounts and records to
15 determine if the licensee has complied with this chapter and any rule adopted
16 pursuant to this chapter. The licensee shall pay the cost of the examination
17 determined in accordance with section 6-125 to the department.

18 C. A LICENSEE SHALL COLLECT AND MAINTAIN INFORMATION ANNUALLY FOR A
19 REPORT THAT SHALL DISCLOSE IN DETAIL AND UNDER APPROPRIATE HEADINGS ALL OF
20 THE FOLLOWING:

21 1. THE TOTAL NUMBER OF DEFERRED PRESENTMENT LOANS MADE DURING THE
22 PRECEDING CALENDAR YEAR.

23 2. THE TOTAL NUMBER OF DEFERRED PRESENTMENT LOANS OUTSTANDING AS OF
24 DECEMBER 31 OF THE PRECEDING CALENDAR YEAR.

25 3. THE MINIMUM, MAXIMUM AND AVERAGE DOLLAR AMOUNT OF DEFERRED
26 PRESENTMENT LOANS MADE DURING THE PRECEDING CALENDAR YEAR.

27 4. THE AVERAGE ANNUAL PERCENTAGE RATE AND THE AVERAGE TERM OF DEFERRED
28 PRESENTMENT LOANS MADE DURING THE PRECEDING CALENDAR YEAR.

29 5. THE TOTAL NUMBER OF DEFERRED PRESENTMENT LOANS PAID IN FULL, THE
30 TOTAL NUMBER OF LOANS THAT WENT INTO DEFAULT AND THE TOTAL NUMBER OF LOANS
31 WRITTEN OFF DURING THE PRECEDING CALENDAR YEAR.

32 D. THE REPORT SHALL BE VERIFIED BY THE OATH OR AFFIRMATION OF THE
33 OWNER, MANAGER OR PRESIDENT OF THE LICENSEE. THE REPORT MUST BE FILED WITH
34 THE SUPERINTENDENT NO LATER THAN MARCH 1 OF THE YEAR FOLLOWING THE YEAR FOR
35 WHICH THE REPORT DISCLOSES THE INFORMATION SPECIFIED IN SUBSECTION C OF THIS
36 SECTION. THE SUPERINTENDENT MAY IMPOSE ON THE LICENSEE A FEE IN AN AMOUNT TO
37 BE DETERMINED BY THE SUPERINTENDENT FOR EACH DAY BEYOND THE FILING DEADLINE
38 THAT THE REPORT IS NOT FILED.

39 Sec. 4. Title 6, chapter 12.1, article 1, Arizona Revised Statutes, is
40 amended by adding sections 6-1264 through 6-1272, to read:

41 6-1264. Posted notices

42 THE FOLLOWING NOTICES IN ENGLISH AND SPANISH MUST BE CONSPICUOUSLY
43 POSTED BY A LICENSEE IN EACH LOCATION OF A BUSINESS PROVIDING DEFERRED
44 PRESENTMENT SERVICES:

1 1. A NOTICE THAT INFORMS CUSTOMERS THAT THE LICENSEE CANNOT USE THE
2 CRIMINAL PROCESS AGAINST A CUSTOMER TO COLLECT ANY DEFERRED PRESENTMENT LOAN.

3 2. THE SCHEDULE OF ALL FINANCE CHARGES TO BE CHARGED ON THE LOAN WITH
4 AN EXAMPLE OF THE AMOUNTS THAT WOULD BE CHARGED ON A ONE HUNDRED DOLLAR LOAN
5 PAYABLE IN THIRTEEN DAYS AND A FOUR HUNDRED DOLLAR LOAN PAYABLE IN THIRTY
6 DAYS, GIVING THE CORRESPONDING ANNUAL PERCENTAGE RATE.

7 3. IN ONE INCH BOLD TYPE, A NOTICE TO THE PUBLIC IN THE LENDING AREA
8 OF EACH BUSINESS LOCATION CONTAINING THE FOLLOWING STATEMENT:

9 WARNING: THIS LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL
10 NEEDS. THIS LOAN SHOULD BE USED ONLY TO MEET SHORT-TERM CASH
11 NEEDS. THE COST OF YOUR LOAN MAY BE HIGHER THAN LOANS OFFERED
12 BY OTHER LENDING INSTITUTIONS. THIS LOAN IS REGULATED BY THE
13 DEPARTMENT OF FINANCIAL INSTITUTIONS.

14 4. IN ONE INCH BOLD TYPE, A NOTICE TO THE PUBLIC IN THE LENDING AREA
15 OF EACH BUSINESS LOCATION CONTAINING THE FOLLOWING STATEMENT:

16 INTEREST-FREE REPAYMENT PLAN: IF YOU STILL OWE ON ONE OR MORE
17 LOANS AFTER THIRTY-FIVE DAYS, YOU ARE ENTITLED TO ENTER INTO A
18 REPAYMENT PLAN. THE REPAYMENT PLAN WILL GIVE YOU AT LEAST
19 FIFTY-FIVE DAYS TO REPAY YOUR LOAN IN INSTALLMENTS WITH NO
20 ADDITIONAL FINANCE CHARGES, INTEREST, FEES OR OTHER CHARGES OF
21 ANY KIND.

22 6-1265. Right to cancel future payment obligations

23 A CUSTOMER MAY CANCEL FUTURE PAYMENT OBLIGATIONS ON A DEFERRED
24 PRESENTMENT LOAN, WITHOUT COST OR FINANCE CHARGES, NO LATER THAN THE END OF
25 THE SECOND BUSINESS DAY IMMEDIATELY FOLLOWING THE DAY ON WHICH THE DEFERRED
26 PRESENTMENT LOAN AGREEMENT WAS EXECUTED. TO CANCEL FUTURE PAYMENT
27 OBLIGATIONS ON A DEFERRED PRESENTMENT LOAN, THE CUSTOMER MUST INFORM THE
28 LICENSEE IN WRITING THAT THE CUSTOMER WANTS TO CANCEL THE FUTURE PAYMENT
29 OBLIGATIONS ON THE DEFERRED PRESENTMENT LOAN AND MUST RETURN THE UNCASHED
30 PROCEEDS, CHECK OR CASH, IN AN AMOUNT EQUAL TO THE PRINCIPAL AMOUNT OF THE
31 LOAN.

32 6-1266. Proceeds and payments; documents

33 A. A LICENSEE MAY ISSUE THE PROCEEDS OF A DEFERRED PRESENTMENT LOAN IN
34 THE FORM OF A CHECK DRAWN ON THE LICENSEE'S BANK ACCOUNT, IN CASH, BY MONEY
35 ORDER, BY DEBIT CARD OR BY ELECTRONIC FUNDS TRANSFER. WHEN THE PROCEEDS ARE
36 ISSUED IN THE FORM OF A CHECK DRAWN ON THE LICENSEE'S BANK ACCOUNT, BY MONEY
37 ORDER OR BY ELECTRONIC FUNDS TRANSFER, THE LICENSEE MAY NOT CHARGE A FEE FOR
38 CASHING THE CHECK, MONEY ORDER OR ELECTRONIC FUNDS TRANSFER. IF THE PROCEEDS
39 ARE ISSUED IN CASH, THE LICENSEE MUST PROVIDE THE CUSTOMER WITH WRITTEN
40 VERIFICATION OF THE CASH TRANSACTION AND SHALL MAINTAIN A RECORD OF THE
41 TRANSACTION FOR AT LEAST THREE YEARS.

42 B. AFTER EACH PAYMENT MADE IN FULL OR IN PART ON ANY DEFERRED
43 PRESENTMENT LOAN, THE LICENSEE SHALL GIVE THE CUSTOMER MAKING THE PAYMENT
44 EITHER A SIGNED, DATED RECEIPT OR A SIGNED, COMPUTER-GENERATED RECEIPT
45 SHOWING THE AMOUNT PAID AND THE BALANCE DUE ON THE LOAN.

1 C. BEFORE A DEFERRED PRESENTMENT LOAN IS MADE, THE LICENSEE SHALL
2 PROVIDE THE CUSTOMER, OR EACH CUSTOMER IF THERE IS MORE THAN ONE, WITH A COPY
3 OF THE DOCUMENTS DESCRIBED IN SECTION 6-1260.

4 D. THE HOLDER OR ASSIGNEE OF ANY DEFERRED PRESENTMENT LOAN AGREEMENT
5 OR OF ANY CHECK WRITTEN BY A CUSTOMER IN CONNECTION WITH A DEFERRED
6 PRESENTMENT LOAN TAKES THE AGREEMENT OR CHECK SUBJECT TO ALL CLAIMS AND
7 DEFENSES OF THE CUSTOMER AGAINST THE MAKER.

8 E. ON RECEIPT OF A CHECK FROM A CUSTOMER FOR A DEFERRED PRESENTMENT
9 LOAN, THE LICENSEE MUST IMMEDIATELY STAMP THE BACK OF THE CHECK WITH AN
10 ENDORSEMENT THAT STATES:

11 THIS CHECK IS BEING NEGOTIATED AS PART OF A DEFERRED PRESENTMENT
12 LOAN AND ANY HOLDER OF THIS CHECK TAKES IT SUBJECT TO ALL CLAIMS
13 AND DEFENSES OF THE MAKER.

14 F. DEFERRED PRESENTMENT LOAN PAYMENTS MAY BE ELECTRONICALLY DEBITED
15 FROM THE CUSTOMER'S BANK ACCOUNT. EXCEPT AS PROVIDED BY FEDERAL LAW, THE
16 LICENSEE MUST OBTAIN PRIOR WRITTEN APPROVAL FROM THE CUSTOMER.

17 G. A CUSTOMER MAY PREPAY ON A DEFERRED PRESENTMENT LOAN IN INCREMENTS
18 OF FIVE DOLLARS OR MORE AT ANY TIME WITHOUT COST OR PENALTY.

19 H. A DEFERRED PRESENTMENT LOAN IS MADE ON THE DATE ON WHICH A LOAN
20 AGREEMENT IS SIGNED BY BOTH PARTIES, REGARDLESS OF WHETHER THE LICENSEE GIVES
21 ANY MONIES TO THE CUSTOMER ON THAT DATE.

22 6-1267. Repayment plan; disclosures; terms

23 A. AT THE TIME A DEFERRED PRESENTMENT LOAN IS MADE, THE LICENSEE SHALL
24 PROVIDE THE CUSTOMER WITH A SEPARATE WRITTEN NOTICE OF THE CUSTOMER'S RIGHT
25 TO REQUEST A REPAYMENT PLAN. THE WRITTEN NOTICE SHALL BE SIGNED BY THE
26 CUSTOMER AND SHALL COMPLY WITH THE REQUIREMENTS OF SUBSECTION C OF THIS
27 SECTION.

28 B. THE DEFERRED PRESENTMENT AGREEMENT SHALL INCLUDE THE FOLLOWING
29 LANGUAGE IN AT LEAST FOURTEEN POINT BOLD TYPE:

30 IF YOU STILL OWE ON A DEFERRED PRESENTMENT AGREEMENT AFTER
31 THIRTY-FIVE DAYS, YOU ARE ENTITLED TO ENTER INTO A REPAYMENT
32 PLAN. THE REPAYMENT PLAN WILL GIVE YOU AT LEAST FIFTY-FIVE DAYS
33 TO REPAY YOUR LOAN IN INSTALLMENTS WITH NO ADDITIONAL FINANCE
34 CHARGES, INTEREST, FEES OR OTHER CHARGES OF ANY KIND.

35 C. AT THE TIME A DEFERRED PRESENTMENT LOAN IS MADE, ON THE FIRST PAGE
36 OF THE DEFERRED PRESENTMENT AGREEMENT AND IN A SEPARATE DOCUMENT SIGNED BY
37 THE CUSTOMER, THE FOLLOWING SHALL BE INSERTED IN AT LEAST FOURTEEN POINT BOLD
38 TYPE:

39 I UNDERSTAND THAT IF I STILL OWE ON A DEFERRED PRESENTMENT
40 AGREEMENT AFTER THIRTY-FIVE DAYS, I AM ENTITLED TO ENTER INTO A
41 REPAYMENT PLAN THAT WILL GIVE ME AT LEAST FIFTY-FIVE DAYS TO
42 REPAY THE LOAN IN INSTALLMENTS WITH NO ADDITIONAL FINANCE
43 CHARGES, INTEREST, FEES OR OTHER CHARGES OF ANY KIND.

1 D. IF THE CUSTOMER HAS A DEFERRED PRESENTMENT LOAN OUTSTANDING FOR
2 THIRTY-FIVE CONSECUTIVE DAYS, THE LOAN OUTSTANDING ON THE THIRTY-FIFTH
3 CONSECUTIVE DAY SHALL BE PAYABLE UNDER THE TERMS OF A REPAYMENT PLAN AS
4 PROVIDED FOR IN THIS SECTION IF THE CUSTOMER REQUESTS THE REPAYMENT PLAN. AS
5 TO ANY LOAN THAT BECOMES ELIGIBLE FOR A REPAYMENT PLAN UNDER THIS SUBSECTION,
6 THE CUSTOMER HAS UNTIL TWENTY-EIGHT DAYS AFTER THE DEFAULT DATE OF THE LOAN
7 TO REQUEST A REPAYMENT PLAN. WITHIN FORTY-EIGHT HOURS AFTER THE REQUEST FOR
8 A REPAYMENT PLAN IS MADE, THE LICENSEE SHALL PREPARE THE REPAYMENT PLAN
9 AGREEMENT AND BOTH PARTIES SHALL EXECUTE THE AGREEMENT. EXECUTION OF THE
10 REPAYMENT PLAN AGREEMENT SHALL BE MADE IN THE SAME MANNER IN WHICH THE LOAN
11 WAS MADE AND SHALL BE EVIDENCED IN WRITING.

12 E. THE TERMS OF THE REPAYMENT PLAN FOR A DEFERRED PRESENTMENT LOAN
13 SHALL INCLUDE ALL OF THE FOLLOWING:

14 1. THE LICENSEE MAY NOT IMPOSE ANY CHARGE ON THE CUSTOMER FOR
15 REQUESTING OR USING A REPAYMENT PLAN. PERFORMANCE OF THE TERMS OF THE
16 REPAYMENT PLAN EXTINGUISHES THE CUSTOMER'S OBLIGATION ON THE LOAN.

17 2. A LICENSEE SHALL NOT CHARGE THE CUSTOMER ANY FINANCE CHARGES,
18 INTEREST, FEES OR OTHER CHARGES OF ANY KIND EXCEPT A FEE FOR INSUFFICIENT
19 FUNDS AS PROVIDED UNDER SECTION 6-1260.

20 3. THE CUSTOMER SHALL BE ALLOWED TO REPAY THE LOAN IN AT LEAST FOUR
21 EQUAL INSTALLMENTS WITH AT LEAST THIRTEEN DAYS BETWEEN INSTALLMENTS IF THE
22 TERM OF THE REPAYMENT PLAN DOES NOT EXCEED NINETY DAYS. THE FIRST PAYMENT
23 UNDER THE REPAYMENT PLAN SHALL NOT BE DUE BEFORE AT LEAST THIRTEEN DAYS AFTER
24 THE REPAYMENT PLAN IS SIGNED BY BOTH PARTIES. THE CUSTOMER MAY PREPAY THE
25 AMOUNT DUE UNDER THE REPAYMENT PLAN AT ANY TIME WITHOUT CHARGE OR PENALTY.

26 4. THE LENGTH OF TIME BETWEEN INSTALLMENTS MAY BE EXTENDED BY THE
27 PARTIES SO LONG AS THE TOTAL PERIOD OF REPAYMENT DOES NOT EXCEED NINETY DAYS.
28 ANY SUCH MODIFICATION SHALL BE IN WRITING AND SIGNED BY BOTH PARTIES.

29 F. NOTWITHSTANDING ANY OTHER LAW, A LICENSEE IS PROHIBITED FROM MAKING
30 A DEFERRED PRESENTMENT LOAN TO A CUSTOMER WHO HAS A DEFERRED PRESENTMENT LOAN
31 OUTSTANDING UNDER A REPAYMENT PLAN AND FOR AT LEAST FOURTEEN DAYS AFTER THE
32 OUTSTANDING BALANCE OF THE LOAN UNDER THE REPAYMENT PLAN IS PAID IN FULL.

33 G. A LICENSEE MAY NOT ACCEPT POSTDATED CHECKS FOR PAYMENTS UNDER A
34 REPAYMENT PLAN.

35 H. NOTWITHSTANDING ANY OTHER LAW, A LICENSEE MAY VOLUNTARILY AGREE TO
36 ENTER INTO A REPAYMENT PLAN WITH A CUSTOMER AT ANY TIME. IF A CUSTOMER IS
37 ELIGIBLE FOR A REPAYMENT PLAN UNDER SUBSECTION D OF THIS SECTION, ANY
38 REPAYMENT AGREEMENT CONSTITUTES A REPAYMENT PLAN UNDER THIS SECTION AND ALL
39 PROVISIONS OF THIS SECTION APPLY TO THAT AGREEMENT.

40 6-1268. Default; legal proceedings; charges; repayment plan

41 A. NO LEGAL PROCEEDING OF ANY KIND, INCLUDING A LAWSUIT OR
42 ARBITRATION, MAY BE FILED OR INITIATED AGAINST A CUSTOMER TO COLLECT ON A
43 DEFERRED PRESENTMENT LOAN UNTIL TWENTY-EIGHT DAYS AFTER THE DEFAULT DATE OF
44 THE LOAN, OR IN THE CASE OF A DEFERRED PRESENTMENT LOAN UNDER A REPAYMENT

1 PLAN, FOR TWENTY-EIGHT DAYS AFTER THE DEFAULT DATE UNDER THE TERMS OF THE
2 REPAYMENT PLAN.

3 B. ON AND AFTER DEFAULT, A LICENSEE SHALL NOT CHARGE THE CUSTOMER ANY
4 FINANCE CHARGES, INTEREST, FEES OR CHARGES OF ANY KIND OTHER THAN THE
5 INSUFFICIENT FUNDS FEE DESCRIBED IN SECTION 6-1260.

6 C. NOTWITHSTANDING WHETHER A LOAN IS OR HAS BEEN IN DEFAULT, ONCE THE
7 LOAN BECOMES SUBJECT TO A REPAYMENT PLAN, THE LOAN SHALL NOT BE CONSTRUED TO
8 BE IN DEFAULT UNTIL THE DEFAULT DATE PROVIDED UNDER THE TERMS OF THE
9 REPAYMENT PLAN.

10 6-1269. Members of the military

11 A. A LICENSEE MAY NOT GARNISH THE WAGES OR SALARIES OF A CUSTOMER WHO
12 IS A MEMBER OF THE MILITARY.

13 B. A LICENSEE SHALL SUSPEND AND DEFER COLLECTION ACTIVITY AGAINST A
14 CUSTOMER WHO IS A MEMBER OF THE MILITARY AND WHO HAS BEEN DEPLOYED TO A
15 COMBAT OR COMBAT-SUPPORT POSTING FOR THE DURATION OF THE DEPLOYMENT.

16 C. A LICENSEE MAY NOT KNOWINGLY CONTACT THE MILITARY CHAIN OF COMMAND
17 OF A CUSTOMER WHO IS A MEMBER OF THE MILITARY IN AN EFFORT TO COLLECT ON A
18 DEFERRED PRESENTMENT LOAN.

19 D. A LICENSEE MUST HONOR THE TERMS OF ANY REPAYMENT PLAN THAT IT HAS
20 ENTERED INTO WITH ANY CUSTOMER, INCLUDING A REPAYMENT AGREEMENT NEGOTIATED
21 THROUGH A MILITARY COUNSELOR OR THIRD-PARTY CREDIT COUNSELOR.

22 6-1270. Advertising

23 A. IF A DEFERRED PRESENTMENT LOAN ADVERTISEMENT STATES A RATE OR
24 AMOUNT OF CHARGE FOR A LOAN, THE ADVERTISEMENT MUST STATE THE RATE AS AN
25 ANNUAL PERCENTAGE RATE. NO LICENSEE MAY ADVERTISE IN ANY MANNER THAT
26 INDICATES OR IMPLIES THAT ITS RATES OR CHARGES FOR LOANS ARE IN ANY WAY
27 RECOMMENDED, APPROVED, SET OR ESTABLISHED BY THE STATE OR THIS CHAPTER.

28 B. IF A DEFERRED PRESENTMENT ADVERTISEMENT STATES THE AMOUNT OF ANY
29 INSTALLMENT PAYMENT, THE DOLLAR AMOUNT OF ANY FINANCE CHARGE OR THE NUMBER OF
30 INSTALLMENTS OR THE PERIOD OF REPAYMENT, THE ADVERTISEMENT SHALL STATE ALL OF
31 THE FOLLOWING:

32 1. THE AMOUNT OF THE LOAN.

33 2. THE NUMBER, AMOUNT AND DUE DATES OR PERIOD OF PAYMENTS SCHEDULED TO
34 REPAY THE INDEBTEDNESS IF THE CREDIT IS EXTENDED.

35 3. THE FINANCE CHARGE EXPRESSED AS AN ANNUAL PERCENTAGE RATE.

36 6-1271. Location restrictions; list of licensees

37 A. A LICENSEE SHALL NOT CONDUCT THE BUSINESS OF MAKING LOANS UNDER
38 THIS CHAPTER AT A LOCATION, EXCEPT A LOCATION ALREADY IN EXISTENCE AS OF THE
39 EFFECTIVE DATE OF THIS SECTION, THAT IS WITHIN ONE MILE OF A HORSE OR DOG
40 TRACK, A FACILITY AT WHICH GAMBLING IS CONDUCTED UNDER TRIBAL STATE GAMING
41 COMPACTS PURSUANT TO TITLE 5, CHAPTER 6 OR ANY STATE OR UNITED STATES
42 MILITARY BASE OR NAVAL INSTALLATION.

43 B. A LICENSEE SHALL NOT CONDUCT THE BUSINESS OF MAKING LOANS UNDER
44 THIS CHAPTER WITHIN ANY OFFICE, SUITE, ROOM OR PLACE OF BUSINESS IN WHICH ANY
45 OTHER BUSINESS IS SOLICITED OR ENGAGED IN UNLESS THE OTHER BUSINESS IS

1 LICENSED BY THE DEPARTMENT OR, IN THE OPINION OF THE SUPERINTENDENT, THE
2 OTHER BUSINESS WOULD NOT BE CONTRARY TO THE BEST INTERESTS OF CUSTOMERS AND
3 IS AUTHORIZED BY THE SUPERINTENDENT IN WRITING.

4 C. THE SUPERINTENDENT SHALL MAINTAIN A LIST OF LICENSEES THAT SHALL BE
5 AVAILABLE TO INTERESTED CUSTOMERS AND LICENSEES AND THE PUBLIC. THE
6 SUPERINTENDENT SHALL MAINTAIN A TOLL FREE TELEPHONE NUMBER FROM WHICH
7 CUSTOMERS MAY OBTAIN INFORMATION ABOUT LICENSEES. THE SUPERINTENDENT SHALL
8 ALSO ESTABLISH A COMPLAINT PROCESS UNDER WHICH AN AGGRIEVED CUSTOMER MAY FILE
9 A COMPLAINT AGAINST A PERSON WHO VIOLATES THIS CHAPTER.

10 6-1272. Bonding

11 A. A PERSON ENGAGED IN PROVIDING DEFERRED PRESENTMENT SERVICES UNDER
12 THIS CHAPTER SHALL POST A BOND TO THE DEPARTMENT IN THE AMOUNT OF FIFTY
13 THOUSAND DOLLARS FOR EACH LOCATION WHERE LOANS WILL BE MADE, UP TO A MAXIMUM
14 BOND AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS.

15 B. A BOND POSTED UNDER SUBSECTION A MUST CONTINUE IN EFFECT FOR THE
16 PERIOD OF LICENSURE AND FOR THREE ADDITIONAL YEARS IF THE BOND IS STILL
17 AVAILABLE. THE BOND MUST BE AVAILABLE TO PAY DAMAGES AND PENALTIES TO A
18 CUSTOMER WHO IS HARMED BY A VIOLATION OF THIS CHAPTER.

19 C. THE SUPERINTENDENT MAY REQUIRE A LICENSEE TO FILE A BOND IN AN
20 ADDITIONAL SUM IF THE SUPERINTENDENT DETERMINES IT TO BE NECESSARY. THE BOND
21 SHALL NOT BE MORE THAN THE OUTSTANDING LIABILITIES OF THE LICENSEE.